

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 24, 2020

SEAN F. MCVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WILLIAM W. BASSETT, JR.,

NO. 2:20-CV-00091-SAB

Petitioner,

v.

**ORDER DISMISSING
PETITION AS TIME-BARRED**

JAMES KEY,

Respondent.

BEFORE THE COURT is Petitioner's timely Response, ECF No. 10, to the Order to Show Cause why this Petition should not be dismissed as time barred, ECF No. 9. Petitioner William W. Bassett, Jr., a prisoner at the Airway Heights Corrections Center, is proceeding *pro se*; Respondent has not been served.

In his Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254, Petitioner challenges his 2016 Spokane County conviction for second degree murder with a weapon enhancement. ECF No. 1 at 1-2. Petitioner claims that he was denied the right to effective assistance of trial counsel and denied the right to "equal punishment." *Id.* at 5, 7-8, 10. The Petition was filed on March 6, 2020, ECF No. 1, and the \$5.00 filing fee was paid.

In response to the Order to Show Cause, Petitioner asks this Court to move him from his current facility, release him from prison, or reverse his murder conviction due to his underlying health conditions and the Coronavirus Disease 2019 (COVID-19) pandemic. ECF No. 10 at 3. To the extent Petitioner is challenging the conditions of his confinement and asserting violations of the Eighth Amendment, he would need to pursue an appropriate remedy in a separate civil rights action for which he would be required to pay the filing fee and to exhaust available administrative remedies before bringing such civil rights action in a federal district court. *See Badea v. Cox*, 931 F.2d 573, 574 (9th Cir.1991) (claims concerning the conditions of confinement are not cognizable on habeas review).

12 A federal petition for writ of habeas corpus is not the appropriate vehicle for
13 obtaining compassionate release. Rather, it is the mechanism by which a state
14 prisoner may challenge the constitutionality of his conviction or sentence. *See*
15 *Preiser v. Rodriguez*, 411 U.S. 475, 489-90 (1973). Petitioner is free to seek
16 compassionate release from the Washington State Department of Corrections or
17 the Spokane County court in which he was convicted. This Court, however, is not
18 authorized to grant Petitioner compassionate release.

FEDERAL LIMITATIONS PERIOD

As stated in the previous Order, a prisoner must seek federal habeas relief within one year after direct appellate review concludes or the time for seeking such review expires. 28 U.S.C. § 2244(d)(1)(A). ECF No. 9 at 2. Petitioner does not dispute that the date of his judgment of conviction was June 8, 2016, or that the one-year period of limitation to file a federal habeas petition began to run thirty days after that date, on July 8, 2016, and expired on July 8, 2017. *Id.*

Because the Washington State Supreme Court denied review of Mr. Bassett's Personal Restraint Petition filed on April 17, 2019 on the basis of untimeliness on February 3, 2020, ECF No. 1-2 at 23, it did not toll the federal

1 limitations period which expired on July 8, 2017. *See Pace v. DiGuglielmo*, 544
 2 U.S. 408, 417 (2005) (“Because the state court rejected petitioner’s [state] petition
 3 as untimely, it was not ‘properly filed,’ and he is not entitled to statutory tolling
 4 under § 2244(d)(2).”). ECF No. 9 at 3-4. Petitioner has provided no reason to delay
 5 the running of the limitations period. *See* 28 U.S.C. § 2244(d)(1)(B)-(D).

6 Although granted the opportunity to do so, Petitioner offers no basis to
 7 equitably toll the federal limitations period in this action. *See Holland v. Florida*,
 8 560 U.S. 631, 649 (2010). Instead, he asks the Court to “over[]rule” the one-year
 9 statute of limitations. ECF No. 10 at 1. Petitioner requests that the Court allow him
 10 to proceed with his habeas corpus petition despite his failure to timely file, citing
 11 his “lengthy terminal disease and its subsequent damages to [his] immune system”
 12 and overall health which make him susceptible to death if he were to contract
 13 COVID-19. *Id.* The Court can infer no basis to equitably toll the federal limitations
 14 period in this action.

15 Accordingly, for the reasons set forth in the Order to Show Cause, ECF No.
 16 9, and taking into account Petitioner’s Response to the Order to Show Cause, ECF
 17 No. 10, **IT IS ORDERED** that the Petition, ECF No. 1, is **DISMISSED with**
 18 **prejudice** as time-barred under 28 U.S.C. § 2244(d).

19 **IT IS ORDERED.** The District Court Executive shall enter this Order, enter
 20 judgment, forward copies to Petitioner and **CLOSE** the file. The Court further
 21 certifies that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could
 22 not be taken in good faith, and there is no basis upon which to issue a certificate of
 23 appealability. 28 U.S.C. § 2253(c); Fed. R.App. P. 22(b).

24 **DATED** this 24th day of July 2020.



25
 26
 27 *Stanley A. Bastian*
 28

Stanley A. Bastian
 United States District Judge